

51 Am. Jur. 2d Licenses and Permits § 4

American Jurisprudence, Second Edition | May 2021 Update

Licenses and Permits
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I. Definition and Nature of License

§ 4. License fees as “taxes”

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Licenses](#) 1, 28

A.L.R. Library

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467

Construction, application, and operation of state “retaliatory” statutes imposing special taxes or fees on foreign insurers doing business with the state, 30 A.L.R.4th 873

Validity and construction of license tax or fee, or business privilege or occupational tax, on persons renting or leasing out real estate, 93 A.L.R.2d 1136

Forms

[Am. Jur. Pleading and Practice Forms, Licenses and Permits § 8](#) (Complaint, petition, or declaration—Challenging municipality’s determination of amount of gross receipts subject to tax—By taxpayer-licensee)

[Am. Jur. Pleading and Practice Forms, Licenses and Permits § 9](#) (Complaint, petition, or declaration—Challenging municipality’s assessment of license tax on income from wages or salary—Where ordinance provides for tax on gross receipts from practice of profession—By taxpayer-licensee)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 246](#) (Complaint, petition, or declaration—By state—to recover unpaid business license tax)

When used in its broad sense, the word “taxes” may include a license fee.¹ Such fees may be imposed upon an occupation, business, or calling,² or the exercise of a privilege.³ A charge exacted for revenue purposes, or to offset the cost of general governmental functions, is generally held to be a “tax,” while a “licensing fee” is a sum collected principally as an integral part of the regulation of an activity and to cover the cost of the regulation.⁴

An “excise tax,” to the extent that it is within a legislature’s authority to enact, is a tax imposed upon engaging in an occupation.⁵

CUMULATIVE SUPPLEMENT

Cases:

The taxation of commercial services constitutes an “occupation tax” which is constitutionally prohibited unless sanctioned by the legislature. [S.H.A. Const. Art. 7, § 6\(e\). Midwest Gaming and Entertainment, LLC v. County of Cook, 2015 IL App \(1st\) 142786, 395 Ill. Dec. 819, 39 N.E.3d 286 \(App. Ct. 1st Dist. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

¹ [Paramount Film Distributing Corp. v. Tracy, 175 Ohio St. 55, 23 Ohio Op. 2d 352, 191 N.E.2d 839 \(1963\).](#)

² [American Beverage Ass’n v. City of Chicago, 404 Ill. App. 3d 682, 344 Ill. Dec. 555, 937 N.E.2d 261 \(1st Dist. 2010\), appeal denied, 239 Ill. 2d 549, 348 Ill. Dec. 189, 943 N.E.2d 1099 \(2011\); City of Terre Haute v. Kersey, 159 Ind. 300, 64 N.E. 469 \(1902\); Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d 697, 1 A.L.R.2d 1160 \(1947\); Draughon v. Fox-Pelletier Corp., 174 Tenn. 457, 126 S.W.2d 329 \(1939\).](#)

³ [El Paso Apartment Ass’n v. City of El Paso, 2011 WL 811680 \(5th Cir. 2011\) \(applying Texas law\); Tax Appeal of Baker & Taylor, Inc. v. Kawafuchi, 103 Haw. 359, 82 P.3d 804 \(2004\); Stone v. Fritts, 169 Ind. 361, 82 N.E. 792 \(1907\); Automobile Gasoline Co. v. City of St. Louis, 326 Mo. 435, 32 S.W.2d 281 \(1930\); Nebraska Telephone Co. v. City of Lincoln, 82 Neb. 59, 117 N.W. 284 \(1908\); Wingfield v. South Carolina Tax Commission, 147 S.C. 116, 144 S.E. 846 \(1928\); Shawnee Bank, Inc. v. Paige, 200 W. Va. 20, 488 S.E.2d 20 \(1997\).](#)

⁴ [Health Services Medical Corp. of Cent. New York, Inc. v. Chassin, 175 Misc. 2d 621, 668 N.Y.S.2d 1006 \(Sup 1998\), aff’d, 259 A.D.2d 1053, 689 N.Y.S.2d 875 \(4th Dep’t 1999\).](#)
As to the amount of imposition, see §§ 38 to 41.

⁵ [Airlines Parking, Inc. v. Wayne County, 452 Mich. 527, 550 N.W.2d 490 \(1996\); Covell v. City of Seattle, 127 Wash. 2d 874, 905 P.2d 324 \(1995\).](#)
As to the distinction between excise taxes and license taxes, see [Am. Jur. 2d, State and Local Taxation § 25](#).